

(b) If the contract is awarded by an agency other than the Department of Defense, the contracting officer shall use the clause at 52.223-3 with its Alternate I.

[56 FR 55374, Oct. 25, 1991]

Subpart 23.4—Use of Recovered Materials

SOURCE: 60 FR 28496, May 31, 1995, unless otherwise noted.

23.400 Scope of subpart.

This subpart prescribes policies and procedures for acquisition of:

(a) Environmental Protection Agency (EPA) designated items for which agencies must develop and implement affirmative procurement programs pursuant to 42 U.S.C. 6901, *et seq.*, and E. O. 12873;

(b) Agency designated items specifying recovered material; and

(c) Other products when preference is given to offers of products containing recovered material.

23.401 Authorities.

(a) The statutory basis for this program is the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (Solid Waste Disposal Act, 42 U.S.C. 6901, *et seq.*). With limited exceptions, the statute requires agencies responsible for drafting or reviewing specifications to ensure that they:

(1) Do not exclude the use of recovered materials,

(2) Do not require the items to be manufactured from virgin materials, and

(3) Do require, for EPA designated items, the use of recovered materials to the maximum extent practicable without jeopardizing the intended end use of the item. The statute further requires agencies to develop and implement affirmative procurement programs for EPA designated items within one year after EPA's designation.

(b) The statute also requires the EPA to prepare guidelines on the availability, sources, and potential uses of recovered materials and associated items, including solid waste management services.

(c) Executive Order 12873, dated October 20, 1993, requires that the Federal Government assume leadership in making more efficient use of natural resources through the acquisition of items made with recovered materials and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such items. Executive Order 12873 also provides direction for agency development and implementation of affirmative procurement programs.

23.402 Definitions.

EPA designated item means an item that is or can be made with recovered materials and is listed by EPA in a procurement guideline (40 CFR, chapter 1, subchapter I).

Postconsumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

Recovered material means waste materials and by-products which have been recovered or diverted from solid waste including postconsumer material, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

23.403 Policy.

The Government's policy is to acquire, in a cost-effective manner, items composed of the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition without adversely affecting performance requirements or exposing suppliers' employees to undue hazards from the recovered materials.

23.404 Procedures.

(a) *Applicability.* These procedures apply to all agency acquisitions where the agency requires minimum percentages of recovered materials. For EPA designated items, these procedures apply

(1) When the price of the item exceeds \$10,000 or